problems with this little section. One is that the minimum number of judges provided in the section now is 46. That is, the chief judge and the 45 associates. In section 3.7, which is coming up, it automatically transfers all of the judges now sitting to this court. That number is only 44, the chief judge and 43 associates. So, to make the present sitting judges enough to satisfy the number for the superior court, I've lowered the number to 43, with the chief judge making the 44th judge, so that no addition would have to be made with the adoption of the constitution.

The second problem is that there is no provision for deciding how we get a number of judges different than the beginning number. And by adding as determined by law, it leaves it up to the legislature to create an extra, if needed, judgship.

DELEGATE BLOUNT: Mr. Chairman, the general counsel gave us that point too in his information.

PRESIDENT CASSELL: Okay. Further discussion? Delegate Love, then Mason, then Rothschild.

DELEGATE LOVE: Mr. Chair, I think that still leaves some problem if the population of the District gets very large or very small; we cannot have less than 43 or more than 48 judges. Therefore, I would like to propose

the following language: The number of judges may be changed by law. That means that if we get larger or smaller at some future date, the number of judges could be changed. It no longer has to be between 43 and 48. And this is in response to our legal counsel's suggestion that we might want to leave that in. His suggestion allowed only increasing the number of judges. It's possible we will lose population as well. So, my proposal allows it to change in either direction.

DELEGATE ROTHSCHILD: Second.

PRESIDENT CASSELL: That's a motion to amend?

DELEGATE LOVE: Yes.

PRESIDENT CASSELL: It has been moved and seconded that we change that language to say that the number of judges shall be specified by law.

DELEGATE LOVE: No, no, may be changed by law.

PRESIDENT CASSELL: Changed by law.

DELEGATE LOVE: It's specified here, but may be changed by law.

PRESIDENT CASSELL: Are you leaving the 45 as it is, the 45 and 48?

DELEGATE LOVE: Yes. I would leave that to say--I would leave it not less than 43 nor more than 48 associate

judges and a period. The final sentence would be: The number of judges may be changed by law.

PRESIDENT CASSELL: Delegate Oulahan.

DELEGATE OULAHAN: Mr. Chairman, I don't know whether any of you are old enough as I am to remember FDR's court-packing plan in the mid-'30s when he tried by legislation to change the number of the justices on the Supreme Court in order that he could get his legislation through. This is precisely, Mr. Love, the kind of amendment that your offering will leave this open. I know you didn't intend it that way. But the result will be to create a situation where a powerful legislature, wanting to change the judiciary, would proceed to start cutting.

Secondly, you can never throw a judge out who's sitting on his term. If a judge has five or ten years to go, you can't terminate him by legislation or any other way except through the tenure commission.

I would urge you to withdraw it because I think it's fraught with danger in court packing.

PRESIDENT CASSELL: Mason. I recognized Hilda Mason.

DELEGATE H. MASON: I yielded to Charles.

SECRETARY COOPER: Point of order, Mr. President.

In debate no delegate can yield his time, his or her time, to another.

PRESIDENT CASSELL: Delegate Mason.

DELEGATE C. MASON: With respect to the matter of the--

PRESIDENT CASSELL: [Rapping gavel] Please, I can't hear Delegate Mason.

DELEGATE C. MASON: I agree that no judge can be unseated within his term by the legislature. So, I think I would therefore object to anything about decreasing the number. There is some merit to leaving off the outer limit or making it clear that the legislature may change it.

The argument presented by Mr. Oulahan against that referred to action of one of our former presidents to increase the number on the Supreme Court. There is a distinction. The Supreme Court always sits en banc. Therefore, by increasing its number, by putting on new appointees of a sitting president, you could very easily affect the outcome of cases in which that president might be interested.

However, a superior court sits as individual judges on the individual cases; and, therefore, adding to the number to take care of work load, it seems to me, is not a means of swaying the opinion of the court as such. The

opinion of the court is the opinion of individual judges in individual cases. Therefore, I would--do we have an amendment before us now?

PRESIDENT CASSELL: We do.

DELEGATE C. MASON: The Love amendment, is that right?

PRESIDENT CASSELL: Yes.

DELEGATE C. MASON: Which removes--which adds at the end the number of judges may be changed by law. I would move an amendment to his amendment to strike the word "change" and insert the word "increase."

DELEGATE H. MASON: I second.

DELEGATE LONG: Point of order, sir.

PRESIDENT CASSELL: Point of order.

DELEGATE LONG: Amendments to an amendment to an amendment are out of order. We can only deal with things of the second degree at one time.

PRESIDENT CASSELL: The motion on the floor, the original motion, is 3.4. It has been amended.

SECRETARY COOPER: It was amended by Long and then amended by Love.

PRESIDENT CASSELL: He's correct. It has been amended twice. Therefore, you could make a substitute

motion, Delegate. Since you did not make that substitute motion, Delegate Mason.

SECRETARY COOPER: Point of order

PRESIDENT CASSELL: Delegate Mason.

SECRETARY COOPER: Point of order.

PRESIDENT CASSELL: Delegate Mason.

SECRETARY COOPER: Point of order.

PRESIDENT CASSELL: Won't you let me finish my little conversation? You can speak afterwards.

SECRETARY COOPER: Point of order.

PRESIDENT CASSELL: I'll be sure to recognize you. I was speaking to Delegate Mason, and I'd like to finish. It'll do no damage to whatever it is you want to say.

SECRETARY COOPER: Yes, it will. Point of order.

PRESIDENT CASSELL: Delegate Mason.

SECRETARY COOPER: Point of order.

PRESIDENT CASSELL: Inasmuch as the amendment that you made was inappropriate, then what you did was out of order. Let me take the next person. I will recognize you again if you want to make a substitute motion.

Now, sir, to your point of order.

SECRETARY COOPER: My point of order is that our rules state that no delegate may yield his or her time to

another delegate. You've insisted on letting Hilda Mason yield her time to Delegate Charles Mason--

PRESIDENT CASSELL: What is the remedy you would like, sir?

SECRETARY COOPER: --who was recognized to speak, and then you allowed him to offer an amendment that was out of order, and another delegate had to inform you that it was out of order, Mr. President. All I want is some order maintained.

PRESIDENT CASSELL: All right--

DELEGATE BLOUNT: Mr. Chairman, I would just like to point out that the committee supports the Long amendment which has a minimum--

PRESIDENT CASSELL: Very good. Further discussion on the Long amendment.

DELEGATE ROTHSCHILD: Point of information. Did we skip what it is that the whole thing--how it reads?

PRESIDENT CASSELL: Delegate Love's amendment would leave this 3.4 intact except that he would add at the end that the number of judges could be changed by law. And his explanation was the population can change. You have heard the response to that. Delegate Love, is that correct, sir? Wouldn't you remember an appeal that was made to you

earlier [addressing interjections by Secretary Cooper]?

Did that state correctly your amendment?

DELEGATE LOVE: Yes. The number of judges may be changed by law. Will I get a chance to be the last speaker before the vote, as per the rules?

DELEGATE JORDAN: No, that's not in the rules.

PRESIDENT CASSELL: Delegate Mason.

SECRETARY COOPER: Point of clarification.

PRESIDENT CASSELL: Delegate Mason, did you wish--

SECRETARY COOPER: Point of clarification.

DELEGATE H. MASON: Mr. Chairman, Delegate Charles Mason has told us that we cannot take a judge out of his seat. So, I don't know how we would put it into the constitution.

PRESIDENT CASSELL: Delegate Brian Moore.

DELEGATE B. MOORE: I'd like to speak in favor of the motion. I think there's another area that Mr. Love's motion could be helpful--I think there's another area where Mr. Love's motion could be helpful as well. Should the legislature decide to establish some inferior courts or if one of the last provisions of this article is adopted where the commission does a study and establishes neighborhood courts, they may reduce the case load.

PRESIDENT CASSELL: Kameny, you're next.

DELEGATE B. MOORE: And if that's the case, if that's the situation, there would be less of a need for judges. Therefore, I think Mr. Love's motion would be quite applicable to this situation.

And in response to Miss Mason's concern, I think that could occur through attrition. As they retired, don't replace them. That would be the most humane. So, I speak in favor of Mr. Love's motion.

PRESIDENT CASSELL: Rothschild and then Freeman.

DELEGATE ROTHSCHILD: First, I would like to inquire of our counsel, a question. Where is our counsel, by the way?

I have a question for you, sir. Currently right now a motion is on the floor that would read--and correct me if I'm wrong, please: The superior court of the state shall consist of a chief judge and not less than 45 nor more than 48 associate judges. The number of judges could be changed by law. Is that correct?

SECRETARY COOPER: No.

PRESIDENT CASSELL: Yes, that is the amendment.

SECRETARY COOPER: That's not the amendment.

DELEGATE HARRIS: As determined by law.

PRESIDENT CASSELL: Would you ask a question.

DELEGATE ROTHSCHILD: My question is this. We specified the lower number, either 43 or 45, and the upper number, 48. And we say the number may be changed by law. Does that mean the law can only change within the 43 to 48 limit, or does it mean that it can change beyond that. Or are we limiting the changes that the legislature can make?

MR. THOMAS: It would seem that the entire number may be changed. You say the number of judges may be changed by law, may be changed by law. It would appear to me that the entire number may be changed.

DELEGATE ROTHSCHILD: Even if we specified 43 and 48, we could still go below 43 and above 48?

MR. THOMAS: It's presumptuous. It's presumptuous. It's not presumptuous. It introduces some vagueness that may only be resolved by litigation. But it would appear on first glance that it means change the whole number.

DELEGATE ROTHSCHILD: That's what I'm concerned about, Mr. President, whether or not we can go beyond those limits, the law can, or whether or not they can only stay between 43 and 48.

PRESIDENT CASSELL: Whether or not the Love amendment allows to go beyond that.

DELEGATE ROTHSCHILD: Right, or below, right.

PRESIDENT CASSELL: Well, a change can be a change, as I see it. Delegate Kameny.

DELEGATE KAMENY: Yes. I have just spoken to Delegate Love, and he would accept the following friendly change for clarification: First, if we have two numbers in there as we now have, then you have to set up a double process. Either of these two numbers are in this range, as may be established by law, and this may be changed by law. This is unnecessarily complex. We should put in one number, and that probably should be the present number, which is 44 and 1, and then say this may be changed by law.

Therefore, I move that this section read that the-- shall consist of a chief judge and 44, which is the present number, of associate judges--

DELEGATE CLARKE: Forty-three.

DELEGATE KAMENY: Of a chief judge and 43 associate judges; this number may be changed by law. And Delegate Love indicates to me that that is acceptable to him. And it simplifies what we are doing. That is my friendly amendment and is acceptable to the original maker.

PRESIDENT CASSELL: Is there a second to that amendment?

A DELEGATE: I'll second it.

DELEGATE KAMENY: Delegate Love?

DELEGATE LOVE: Yes, I accept it.

DELEGATE BLOUNT: Delegate Clarke would like to speak for the committee.

PRESIDENT CASSELL: Does the seconder accept it?

DELEGATE BALDWIN: Yes, he says he accepts it.

PRESIDENT CASSELL: Okay, discussion. Garner.

DELEGATE GARNER: Seeing as how there has been debate both pro and con on the motion on the floor, I call the question.

DELEGATE BLOUNT: Second.

PRESIDENT CASSELL: Those in favor of calling the question, signify by--

SECRETARY COOPER: Point of order. Point of order.

DELEGATE LOVE: Mr. Chairman, I think I am allowed to make the last statement.

SECRETARY COOPER: Mr. President, point of order.

DELEGATE CORN: Mr. President. Mr. President.

PRESIDENT CASSELL: Only one person can have the floor at a time. Yes, Mr. Love. [Rapping gavel to restore order]

DELEGATE LOVE: Do the rules allow me to be the

last one to speak before we take the vote?

PRESIDENT CASSELL: Yes, it does.

DELEGATE LOVE: I just wanted people to know the proposal that I have made is not exactly controversial or off the wall. I will read you from the Alaska constitution: The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law. I took the sentence straight from the Alaska constitution. We may not want to accept it, but it's something that's in Alaska, and they're obviously not worried about court packing. Thank you.

PRESIDENT CASSELL: The question was called. Does that person wish to call the question again?

A DELEGATE: Yes, sir.

SEVERAL DELEGATES: Second.

PRESIDENT CASSELL: The question has been called.

DELEGATE H. MASON: Mr. Chairman, point of order.

PRESIDENT CASSELL: Point of order.

DELEGATE H. MASON: You promised Delegate Charles Mason you would call on him to speak.

PRESIDENT CASSELL: So, I did. So, I did.

Delegate Mason, I made that promise. Delegate Mason.

DELEGATE C. MASON: There has been a question raised as to the propriety of reducing the number of--

PRESIDENT CASSELL: I'm having some difficulty hearing you, Delegate Mason.

DELEGATE C. MASON: Would the maker of the motion accept the language "increase" rather than "change"? Do you accept the language "increase" rather than "change"?

DELEGATE LOVE: No, because I think that's a substantive change. I think you should come in with--if people don't agree--I just think that if the population of the District is cut in half by a war or something, we don't need 48 judges. That's all.

PRESIDENT CASSELL: I'd like to ask a question of the maker for clarification, which may be in the minds of others, that has been expressed. If the population should decrease, how would you eliminate a sitting judge?

DELEGATE LOVE: They would pass a number and, as people retire, there would be attrition and the number would drop.

PRESIDENT CASSELL: And that's what you had in mind?

DELEGATE LOVE: Yes.

PRESIDENT CASSELL: Very good. Delegate Mason,

had you finished?

DELEGATE C. MASON: Is it appropriate to offer a substitute to simply change the maximum number--

PRESIDENT CASSELL: [Rapping gavel] I guess you're going to have to hold it until we get some order. Delegate Kameny, Love, Marcus, it's very difficult to hear.

Delegate Mason, I'm sorry, I didn't hear what you said at the end and others may not have either.

DELEGATE C. MASON: I said: Procedurally would it be possible for me to offer at this time a substitute which would be written exactly like his, except it would say "increase" rather than "change"? The maximum number of judges may be increased by law.

PRESIDENT CASSELL: There have been two amendments. I know of no reason why you can't have a substitute to an amendment. That's three different actions, but I believe that it's legal. Do you care to offer it?

DELEGATE C. MASON: I offer that.

DELEGATE SCHRAG: Second.

PRESIDENT CASSELL: I don't know whether everybody has heard that or not [rapping gavel]. Delegate Mason has offered a substitute motion which would change the words in Love's motion to say increase rather than change. Is that

correct?

DELEGATE C. MASON: That's right.

PRESIDENT CASSELL: Discussion. Delegate Corn.

DELEGATE CORN: I'd like to offer a substitute motion.

PRESIDENT CASSELL: I'm afraid you can't make a substitute to a substitute. Delegate Schrag.

DELEGATE CORN: Sir, you're allowed to make a substitute motion on a substitute motion. Yes, you can, sir. You can't make an amendment to an amendment to an amendment, but you can offer a substitute motion.

DELEGATE SCHRAG: May we have order, Mr. Chair, Mr. President?

PRESIDENT CASSELL: Yes.

DELEGATE SCHRAG: Mr. President, I rise to speak in support of the Mason substitute amendment, and I understand from Delegate Blount that the Mason substitute also has the support of the committee chair. The substitute is preferable to the Love motion because creating the ability to reduce the number of judges creates not only legal questions about diminishing the terms of sitting judges in office, but also possible political opposition to the new constitution from judges who might be worried about their terms being cut by

the legislature. The Mason substitute is addressed to the real problem, which is the likelihood that the superior court will need more judges as the District increases in population. The other problem, the possibility of decrease, could be dealt with--it's less of a crisis. It could be dealt with if that eventuality arises by constitutional amendment.

PRESIDENT CASSELL: [Rapping gavel] Please, please.

DELEGATE SCHRAG: Or by the governor simply not--and the judicial nominating commission simply leaving some seats vacant for a while while the voters consider a constitutional amendment. But the Mason amendment is necessary to take care of the day when our population increases and we may need more judges.

PRESIDENT CASSELL: Okay. Delegate Kameny, Garner. I beg your pardon, Delegate Kameny.

DELEGATE KAMENY: My comments have been responded to.

PRESIDENT CASSELL: Delegate Garner.

DELEGATE GARNER: The motion on the floor is 3.4, which Long has amended, which Love has amended, which Mason has offered a substitute to. We will be here all night debating that. I move to table the motion on the floor: the

Mason substitute. The motion to table is not debatable. If passed by a majority, it closes off debate.

PRESIDENT CASSELL: Was there a second to that motion?

It dies for lack of a second.

Further discussion on the substitute motion? Delegate Kameny.

DELEGATE KAMENY: My comment was taken care of by Delegate Schrag's comments a moment ago. Thank you.

PRESIDENT CASSELL: Delegate Clarke.

DELEGATE CLARKE: I move the previous question.

DELEGATE BLOUNT: Second.

PRESIDENT CASSELL: Those in favor of cutting off debate, signify by saying, "Aye." [Response]

Those opposed? [Silence]

Abstained? [No abstentions]

PRESIDENT CASSELL: All right, we're at the Mason motion. The Mason motion is to substitute at the end of line 4 "may be changed by law" to "may be increased." Is that correct?

DELEGATE C. MASON: That's correct.

PRESIDENT CASSELL: Okay. Delegate Brian Moore.

DELEGATE B. MOORE: Can statements still be made?

PRESIDENT CASSELL: No. As a matter of fact, I shouldn't have called on you. We just cut off debate.

Those in favor of the substitute motion by Delegate Mason, signify by saying, "Aye." [Response]

Those opposed? [Response]

Abstain? [No abstentions]

Motion carries. Delegate Blount.

DELEGATE BLOUNT: We're down to as amended, right?--3.4 as amended.

SECRETARY COOPER: No, we're to the Long amendment. We're down to Long's amended by Love.

DELEGATE BLOUNT: Long's amended motion.

Mr. Chairman, I think we're at the main motion, aren't we?

PRESIDENT CASSELL: No, Long's.

DELEGATE BLOUNT: Because Delegate Mason made a substitute motion.

[Pause for officers to confer.]

PRESIDENT CASSELL: I beg your pardon. The motion by Delegate Long to maintain the number of judges as those that we have now--it would change 45 to 43, no more than 48 associate judges. The amendment is except as to be increased.

DELEGATE KAMENY: I believe it was my understanding that it was understood that we were going to eliminate the upper part and just put in a single figure.

PRESIDENT CASSELL: I don't believe so.

DELEGATE KAMENY: Otherwise we end up with an untenably complex situation.

PRESIDENT CASSELL: Let's read Long's motion.

SECRETARY COOPER: The superior court of the state shall consist of a chief judge and not less than 43, nor more than 48, associate judges as determined by law.

PRESIDENT CASSELL: The substitute motion amended that.

SECRETARY COOPER: Right. It amended that to say the number of judges may be increased by law.

PRESIDENT CASSELL: The substitute motion made only that change.

SECRETARY COOPER: Right. It added that to the end.

PRESIDENT CASSELL: And that was a change to Long's motion, right?

SECRETARY COOPER: No, that was a change to Love's.

DELEGATE KAMENY: And Love's motion was changed to drop the upper limit before the amendment was made to it.

DELEGATE B. MOORE: Point of order, Mr. Chair.

PRESIDENT CASSELL: No.

DELEGATE KAMENY: Yes. Yes.

PRESIDENT CASSELL: I don't think so.

DELEGATE KAMENY: I spoke, and he accepted the change. And then Delegate Mason made the change just to increase rather than to change, from the 43 without the 48.

DELEGATE EICHHORN: That's right. That is correct.

PRESIDENT CASSELL: All right. How would that read now?

DELEGATE EICHHORN: The superior court of the state shall consist of a chief judge and not less than 43 associate justices. This number may be increased by law.

DELEGATE KAMENY: Leave out the "not less than."

DELEGATE EICHHORN: Forty-three. That's right. And 43 associate justices. This number may be increased by law.

DELEGATE KAMENY: That's right. That's right.

PRESIDENT CASSELL: The Long motion on the floor now is: The superior court of the state shall consist of a chief judge and 43 associate judges. This number may be increased by law. Is that correct?

DELEGATE LONG: Mr. President.

PRESIDENT CASSELL: The chair is confused now.

Mr. Long, let's go back and start with yours.

DELEGATE LONG: Okay. I moved an amendment which changed the word 45 to 43 and added at the end of that fourth line "as determined by law." Then Mr. Love moved to change the end of the line only that the number of judges could be changed by law. At that point Delegate Mason moved to substitute for the word "changed" to "increased."

PRESIDENT CASSELL: By law.

DELEGATE KAMENY: You left out one step. Mr. Love accepted a friendly amendment by me to drop the upper limit.

DELEGATE LONG: To drop 48.

DELEGATE KAMENY: The 48.

DELEGATE LONG: To drop 48. Okay, so, I guess we're back to this amended motion by Love at that point. Love's amendment to my amendment is the thing before the house. If there was a substitute, then all we have is the end of the line is changed to read: can be increased by law. And everything else stands.

SECRETARY COOPER: That's right. That's absolutely right.

DELEGATE BALDWIN: Mr. President, you have before the house the Long amendment with the attached friendly amendment by Delegate Kameny. And that's what's on the floor.

PRESIDENT CASSELL: Okay, what we need to do is to read that as it should be.

SECRETARY COOPER: We never took any action on what Kameny said.

PRESIDENT CASSELL: Now, may I read this once more?

The superior court of the state shall consist of a chief judge and 43 associate judges. What is the next line, the substitute motion?

DELEGATE BALDWIN: No, don't use the word substitute. Just add on what Delegate Kameny accepted.

PRESIDENT CASSELL: This number may be increased by law.

DELEGATE BALDWIN: That's it. That's what's on the floor.

PRESIDENT CASSELL: The motion has been read now twice. Is that clear now? All in favor of the motion as restated, signify by saying, "Aye." [Response]

Those opposed? [Silence]

Abstain? [No abstentions]

Thank you.

DELEGATE B. MOORE: Mr. President, a point of order. A point of information.

DELEGATE BLOUNT: I move the adoption of section 3.5.

DELEGATE KAMENY: Second.

PRESIDENT CASSELL: Point of order.

DELEGATE B. MOORE: Yes. I am concerned that--one of the officers, our Secretary Cooper has expressed some concern about what was really decided upon. And apparently he feels we're incorrect in what we were voting on. And I'd like a clarification on that.

PRESIDENT CASSELL: The chair rules that the vote is over. We stated this twice. I think it's clear. I am not concerned about interruptive and disruptive tactics. Those people who have legitimate concerns and are seeking information we can respond to. Yes.

DELEGATE EICHHORN: Point of order. I'd like, in view of Delegate Moore's statement, I would like the record to reflect that was a unanimous vote on that motion.

PRESIDENT CASSELL: So ordered. So ordered.

Delegate Blount.

DELEGATE BLOUNT: I move the adoption of section 3.5, Composition - Supreme Court.

SEVERAL DELEGATES: Second.

DELEGATE ROTHSCHILD: Point of information.

PRESIDENT CASSELL: Who seconded that, please?

DELEGATE BALDWIN: Second.

PRESIDENT CASSELL: All right. Discussion.

DELEGATE ROTHSCHILD: Point of information. Committee.

DELEGATE ROTHSCHILD: In 3.4, in the superior court, when it says: shall consist of a chief judge--

PRESIDENT CASSELL: Sir, that is past. You cannot ask a question. I will not entertain questions on a motion that is past. It has been adopted.

DELEGATE ROTHSCHILD: Wait a minute. Let me ask a question.

PRESIDENT CASSELL: I am not going to wait. You cannot ask a question on something that is--

DELEGATE ROTHSCHILD: I'll ask it anyway.

PRESIDENT CASSELL: You cannot.

DELEGATE ROTHSCHILD: Yes, I will.

PRESIDENT CASSELL: You cannot.

DELEGATE ROTHSCHILD: Because it's on 3.5, if you listen. Hang on. [Delegates laugh.]

Does the chief judge in 3.5--is that the same thing as the chief judge in 3.4?

DELEGATE BLOUNT: Mr. Chairman, we have some technical changes to 3.5 that I would like to propose in general consensus.

PRESIDENT CASSELL: Delegate Blount.

DELEGATE BLOUNT: In place of chief judge it will be chief justice and not more than eight associate justices.

PRESIDENT CASSELL: Discussion on 3.5. Kameny, Moore, Mason.

DELEGATE KAMENY: For reasons indicated before, I would suggest that we delete the words "not more than" and set the size of our court. So, it will read: The supreme court shall consist of a chief justice and eight associate justices.

A DELEGATE: Second.

DELEGATE EICHHORN: The committee accepts that.

PRESIDENT CASSELL: It has been moved and seconded that on line--what line wast that?

DELEGATE BLOUNT: We accept it. Do it by general consensus, by general consensus.

PRESIDENT CASSELL: Very good. Go ahead, Delegate Blount. Further discussion on 3.5? Moore.

DELEGATE B. MOORE: Could you repeat Mr. Kameny's motion? Could I have a clarification?

DELEGATE BALDWIN: We're not on that, sir. You should go to the secretary. We're not on that. That's past action. We're on 3.5.

PRESIDENT CASSELL: No, he's talking about--

DELEGATE BALDWIN: You mean, the present motion?

PRESIDENT CASSELL: Yes.

DELEGATE BALDWIN: He just said delete not more than.

DELEGATE B. MOORE: I'd like to make an amendment to the motion regarding the number of justices. Is that appropriate at this time, Mr. President?

PRESIDENT CASSELL: Sure.

DELEGATE B. MOORE: I move that the article 3.5 read as follows: The supreme court shall consist of a chief justice and four associate justices who shall sit en banc and not by division or panel, and that the reduction be achieved by attrition.

DELEGATE ROTHSCHILD: Second. In other words, you want five instead of nine.

DELEGATE B. MOORE: That's right, four justices of the supreme court.

PRESIDENT CASSELL: Okay.

DELEGATE B. MOORE: I'd like to address that now, please.

PRESIDENT CASSELL: Does everybody here understand that motion? Delegate Moore would reduce eight justices to

four. So, there's a total of five, four and a chief justice.

DELEGATE B. MOORE: Yes. My reasons for that are as follows. In reviewing the number of supreme court justices around the country, the following numerical breakdown is that nine states--all of them are major--have nine justices. Twenty-two states, which are of significant size, have seven justices. Sixteen states have five justices. And three states have three justices. And there's a similar breakdown with regard to the tier system; that is, the two-tier or the three-tier. And I just can't understand why the District of Columbia, which has a population of 634,000, needs eight justices and a chief of the supreme court. They sit en banc. They can't cover any larger a case load or any small a case load than they do now. Why do we have to pay salaries for nine positions and staff for nine positions?

It's a matter of efficiency. It's a time in our society where money is important. And it will not lessen the degree of justice in our system.

DELEGATE CORN: How many sit now?

DELEGATE B. MOORE: I believe right now there are nine.

PRESIDENT CASSELL: Please, please allow--yes, Delegate Clarke.

DELEGATE CLARKE: I would speak in opposition to the motion. Some of the jurisdictions have three-tier systems as Mr. Moore has pointed out. Some apparently do not. Some of them operate by certiorari, which is an optional appeal system. We have provided in the earlier statute, in the judicial power section of the earlier version we adopted, that the appeals will be of right. So, therefore, everybody will have the ability to appeal of right in this case. We will already, by a part of this which I don't agree with--but as I am of the committee I will stand behind it--provide for en banc hearings instead of panel hearings. That's going to make a tremendous impact upon the court's work load by essentially changing the court to one court from three courts because now with nine judges they sit in three panels.

I would recommend very strongly to leave it where it is when it comes to the courts.

PRESIDENT CASSELL: Delegate Mason. Hilda Mason.

DELEGATE H. MASON: I pass.

PRESIDENT CASSELL: Rothschild.

DELEGATE ROTHSCHILD: Rothschild, Ward 2. I don't see that it really makes a difference in whether there's five or nine in the sense of more justice being at the top. The fact is that they all have to sit together and you can't divide

them up. If you were going to divide them up, you might want more judges. But the fact that you can't divide them up, five is enough company; they don't need nine people. And if there's a virus or a flu, there would still be enough left. I think five is enough, and it's cheaper. Let's save money on this and spend it on something worthwhile. Thank you.

DELEGATE THOMAS: Mr. Chairman, call the question, please.

PRESIDENT CASSELL: The question has been called.

SEVERAL DELEGATES: Second.

PRESIDENT CASSELL: Those in favor of calling the question, signify by saying, "Aye." [Response]

Those opposed? [Response]

Abstain? [No abstentions]

The motion on the floor is Delegate Moore's amendment to change the eight associate judges on line 6 to four associate judges. Those in favor of that motion, signify by saying, "Aye."

DELEGATE B. MOORE: Mr. President.

PRESIDENT CASSELL: Yes.

DELEGATE B. MOORE: Could the motion be read clearly?--because there's some addition to the language

there that wasn't mentioned--by attrition.

DELEGATE THOMAS: Point of personal privilege.

PRESIDENT CASSELL: Yes, point of personal privilege.

DELEGATE THOMAS: Mr. President, I don't know whether Brian Moore is trying to sabotage us or what he's trying to do. But I've heard the same thing--

DELEGATE BRUNING: Point of order. Point of order.

DELEGATE KAMENY: You made one single change; that was a number. You changed nothing else that is written down here.

DELEGATE BRUNING: Point of order.

DELEGATE KAMENY: That's the amendment.

DELEGATE BRUNING: Point of personal privilege. Point of personal privilege. Point of personal privilege.

PRESIDENT CASSELL: Yes.

DELEGATE BRUNING: As frustrated as I am by this whole event of tonight, nevertheless, I would please ask delegates not to make their remarks personal because I think at some point I'll probably be the person who's getting the heat.

DELEGATE THOMAS: Bruning, I respect your request.

PRESIDENT CASSELL: Mr. Secretary, would you read

the motion, the entire motion.

SECRETARY COOPER: The superior court shall consist of a chief judge and an appropriate number of associate judges, as determined by--

PRESIDENT CASSELL: We're on 3.5 now, 3.5.

SECRETARY COOPER: Oh, sorry.

The supreme court shall consist of a chief judge and four associate judges--justices--who shall sit en banc and not by division or panel. Reduction may be done by attrition.

PRESIDENT CASSELL: Okay, is that clear? The changes are that the number of associate judges is reduced from eight to four and that the changes may be or shall be reduced by attrition. Those in favor of that motion, please signify by saying, "Aye." [Response]

Those opposed? [Response]

Abstain? [One abstention]

The motion loses.

DELEGATE B. MOORE: Mr. President, could we have a hand count?

PRESIDENT CASSELL: That vote is over now. Delegate Schrag. [Pause for officers to confer]

You're not sure about it. Let's go back to that

vote. Those in favor of Mr. Moore's amendment, signify by raising your hands. [Show of hands]

Those opposed? [Show of hands]

SECRETARY COOPER: Mr. President, we don't have a quorum present. We cannot vote.

PRESIDENT CASSELL: Those opposed? [Show of hands]

SECRETARY COOPER: Mr. President, we don't have a quorum present. We cannot vote.

PRESIDENT CASSELL: Those abstaining?

Why don't we see if we can get our quorum back, please?

DELEGATE BALDWIN: There is a quorum in the convention hall, Mr. President.

PRESIDENT CASSELL: All right, we have a quorum. Will those people who are standing please--[rapping gavel]--will those people who are standing now please be prepared to vote. We're now voting on Delegate Moore's amendment, and that amendment is to change the number of associate judges from eight to four and to indicate that the reduction shall be had by attrition.

Those in favor of that motion, signify by raising your hands, please. [One hand raised]

Those opposed? [Show of hands]

DELEGATE B. MOORE: I voted in favor of it, sir.

PRESIDENT CASSELL: We'll record you.

SECRETARY COOPER: Fourteen opposed.

PRESIDENT CASSELL: Those abstaining? [No abstentions]

The motion loses.

Delegate Schrag.

DELEGATE SCHRAG: Mr. President, I am not going to make a motion, but I want to ask the maker of the motion, Mr. Blount, a question for the record, and then style and drafting can clear up the ambiguity without having to go through the amendment process. Mr. Blount, do I understand correctly that the en banc requirement in this section refers only to the merits of appeals and does not bar an individual justice from handling minor procedural motions such as requests for stays, motions to expedite time, and the like?

DELEGATE BLOUNT: That's correct.

DELEGATE SCHRAG: Thank you, Mr. Blount.

PRESIDENT CASSELL: We are back to the main motion now.

DELEGATE JACKSON: Mr. Chair.

PRESIDENT CASSELL: Yes.

DELEGATE JACKSON: May I speak for a minute? It seems odd to me that in writing a constitution for a new state that all the references there are to the former District of Columbia. It's almost like I were a colony; you keep referring to me as the former colony. So, if I'm from Jamaica, Jamaica was a colony of England. You refer to it as the former colony of England. It seems to me that there should be a better way of doing this. I don't know if there is or not. It's purely a technical matter for the cleanup of the constitution. I would hope that the committee--maybe it could be referred to the style and drafting committee. But I would like to move, Mr. Chair, that the reference to the former District of Columbia be taken out and that we find a better way, which I don't have an answer to.

DELEGATE OULAHAN: Mr. Chairman, may I respond?

PRESIDENT CASSELL: Is there a second to that motion?

DELEGATE BRUNING: Point of order.

PRESIDENT CASSELL: Point of order.

DELEGATE BRUNING: We're not in a section that has any of that wording in there. Please, let's remain on the section that we're at.

PRESIDENT CASSELL: Delegate Jackson, it has been

pointed out that we're on a specific motion now. I think you've expressed a feeling, but it's not something we can vote on. It doesn't apply.

DELEGATE JACKSON: Then I make a motion afterwards?

PRESIDENT CASSELL: Sure.

Delegate Love.

DELEGATE LOVE: Mr. Chair, it appears to me that the right of appeal is a right that everybody should be offered the opportunity to. And by requiring the bench to sit and not by division, it is entirely possible that the court would be able to hear far fewer appeals than it does now. Because I would like hear discussed that problem, I would like to move that the phrase "who shall sit en banc and not by division or panel" be omitted.

PRESIDENT CASSELL: Is there a second to that?

DELEGATE CLARKE: Yes, I'll second.

DELEGATE OULAHAN: Mr. Chairman, I'm responding for the committee. The provision was placed in there because that was in the judicial report of the present court of appeals which said that if they became a supreme court, they should sit en banc.

Secondly, supreme courts sit en banc so that you get brought to bear upon each question that comes before the

court all of the positions of the justices. Let me put this to you. Suppose the supreme court of the United States sat in panels and you had a panel consisting of the chief justice, Justice Rehnquist and the new judge from California. That's the reason why we have it en banc, so that you get the full panoply of everyone on that court to hear your case.

PRESIDENT CASSELL: We are now back to the main motion, adoption of 3.5, section 3.5.

DELEGATE FREEMAN: No, there is an amendment on the floor.

PRESIDENT CASSELL: What is the amendment?

DELEGATE FREEMAN: He moved to delete "who shall sit en banc and not by division."

PRESIDENT CASSELL: Oh, I beg your pardon. The motion on the floor is now--is there further discussion on that amendment?

DELEGATE ROTHSCHILD: Yes, yes, there is further discussion in favor of it. I think quite frankly we are boxing ourselves--

PRESIDENT CASSELL: You are recognized.

DELEGATE ROTHSCHILD: Thank you. Mr. President, I think that we are boxing ourselves into a corner, and in following little bits and pieces of advice in terms of--

[The president raps gavel to restore order.]

DELEGATE ROTHSCHILD: --in terms of collecting testimony and so forth. I don't think we're viewing the overall system and the efficiency of the overall system.

As I spoke earlier in favor of an appellate court, the reason I am speaking in favor of Mr. Love's motion is for the same rationale. I think by having 45 systems filter into one, that you basically are going to create a tremendous backlog or a suppression of appeals. So, I think we should leave open the possibility of being able to break up the judges into panels. Thank you.

PRESIDENT CASSELL: Further discussion on the motion to eliminate who shall sit en banc?

Are you ready for the question?

Those in favor of the motion to eliminate or delete "who shall sit en banc," signify by saying, "Aye," please. [Response]

Those opposed? [Response]

Abstain? [No abstentions]

Back to the main motion: 3.5. Those in favor of 3.5 as amended, please signify by saying, "Aye." [Response]

Those opposed? [Response]

Abstain? [One abstention]

[The motion carried.]

PRESIDENT CASSELL: Delegate Blount.

DELEGATE BLOUNT: I move the adoption of section 3.6, Former District of Columbia Court of Appeals Judges.

DELEGATE KAMENY: Second.

PRESIDENT CASSELL: Moved and seconded that 3.6 be adopted. Discussion.

Are you ready for the vote?

Those in favor of adopting 3.6, signify by saying--

DELEGATE BLOUNT: Mr. Chairman, I would also like to point out that the general counsel indicated that these articles are 3.6, 3.7, and 3.8, are acceptable because they are basically sort of a transitional nature.

PRESIDENT CASSELL: Very good. Those in favor of 3.6, signify by sayiing, "Aye." [Response]

Those opposed? [Silence]

Abstained? [No abstentions]

The motion carries.

DELEGATE CORN: Point of information.

PRESIDENT CASSELL: If it's on that motion, that motion has been adopted.

DELEGATE CORN: I still need to know where is

"justice" instead of "judge."

PRESIDENT CASSELL: I think the point was made that only for supreme court, "judge" should always be changed to "justice." Delegate Blount.

DELEGATE BLOUNT: I move the adoption of section 3.7 and 3.8 in light of previous discussion.

PRESIDENT CASSELL: Second?

SECRETARY COOPER: Point of order. Point of order, Mr. President.

DELEGATE BALDWIN: Just take 3.7.

DELEGATE BLOUNT: I withdraw that.

PRESIDENT CASSELL: All right.

DELEGATE BLOUNT: I move the adoption of section 3.7.

PRESIDENT CASSELL: Moved and seconded that section 3.7 be adopted. Discussion?

Those in favor, signify by saying, "Aye." [Response]

Those opposed, "Nays." [Silence]

That is adopted.

Delegate Blount.

DELEGATE BLOUNT: I move the adoption of section 3.8, Retired Judges of the District of Columbia Court of Appeals.

DELEGATE MARCUS: Second.

PRESIDENT CASSELL: Moved and seconded that 3.8 be adopted. Discussion? Kameny.

DELEGATE KAMENY: I rise to oppose this one. I don't think we should have retired senior justices of the supreme court. When they're gone, they're gone. From what I've seen of the retired judges of our D.C. Court of Appeals, I'm delighted to have them go. They're a dreadful lot. There are some I think should have gone long before they went. And I think that our retired judges should not become retired justices or in 1990 or whenever we come a state, we will be getting the best legal interpretations of 1890 by the retired people that should have been gone a long time ago. [Delegates laugh.]

PRESIDENT CASSELL: Delegate Oulahan.

DELEGATE OULAHAN: Mr. President, I think my friend Mr. Kameny has a misconception of what the retired judges do. The retired judges help the court. At times--

DELEGATE KAMENY: Thank you

DELEGATE OULAHAN: May I continue, Mr. Chairman?

PRESIDENT CASSELL: Yes. Please, respect.

DELEGATE OULAHAN: They are used by the chief judge for settlement conferences as well as also assisting

in hearing cases. There are four judges. They are not four old men. They are very distinguished persons, including Judge Pare, the former corporation counsel of the District of Columbia. And I certainly want to stand here and don't want to hear their reputations impugned. This is done to help the court and help the load that's on the court.

Secondly, these people can't be fired. Retired judges are retired; so, we might as well use them while they're on the payroll. Thank you.

DELEGATE KAMENY: Judge Pare is the worst example of exactly what I meant. He's dead, thank goodness.

PRESIDENT CASSELL: You're out of order, sir. Please. Long. You withdraw. Love.

DELEGATE LOVE: Yes. Now that we have voted that this supreme court must sit all together, whenever one goes on a vacation, appeals are not going to be heard. So, the only alternative is now to pull in retired judges. So, by doing one thing in order not to limit people's need for appeal--

PRESIDENT CASSELL: Are you speaking for or against the motion?

DELEGATE LOVE: I'm speaking for the motion. You are now going to have to vote to put these retired judges in

in order to see that people are allowed to appeal.

PRESIDENT CASSELL: Thank you. Delegate Long.

DELEGATE LONG: I just had a question. Where are the duties of these retired judges outlined in this article? All this does is give them a name without any duties.

DELEGATE OULAHAN: Mr. Chairman, speaking for the committee, the retired justices carry out the duties of the judicial power which is granted by section 3.1. The judicial duties are not enumerated in a constitution. They are not enumerated in the federal constitution.

PRESIDENT CASSELL: Yes, Dr. Kameny.

DELEGATE KAMENY: Yes. First of all, Delegate Oulahan said they will be hearing cases. I thought our supreme court was sitting en banc. Does that mean that we're going to have a bigger banc--[delegates laugh]--when these people sit there?

Secondly, if the duties of judges are not set out in the constitution, they should be. And just because the Federal Constitution--the section on the judiciary of which is notoriously deficient--that's one of the reasons we have so many problems with our courts in some ways--does not mention these things is no reason why our constitution shouldn't. It should. I speak again in opposition to 3.8.

And I point out again that if Judge Pare is still alive and around, he's the example--

PRESIDENT CASSELL: Thank you.

DELEGATE KAMENY: --par excellence of why we should turn this proposal down.

PRESIDENT CASSELL: Anybody else against? Anyone else against?

All right, those in favor of 3.8, signify by saying, "Aye." [Response]

Those opposed? [One "Nay"]

Those abstaining? [No abstentions]

Delegate Blount.

DELEGATE BLOUNT: I move the adoption of section 3.9, Expiration of Terms and Other Vacancies.

A DELEGATE: Second.

PRESIDENT CASSELL: Moved and seconded that 3.9 be adopted. Discussion?

Those in favor, signify by saying, "Aye." [Response]

Opposed, "Nay." [Silence]

Delegate Blount. Delegate Blount.

DELEGATE BLOUNT: I move the adoption of section 3.10, Nomination and Appointment.

SEVERAL DELEGATES: Second.

PRESIDENT CASSELL: Moved and seconded that 3.10 be adopted. Jordan, Corn.

DELEGATE JORDAN: Mr. Chair, I would like to move a substitute motion for section 3.10. And I submitted this to the secretary on the 24th of April, 1982. And, if you want, I can read it. I hope everyone has a copy of it.

A DELEGATE: No.

DELEGATE JORDAN: Well, I'll read it then. It says: The governor shall fill any vacancy in any office of the supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial nominations commission. Each supreme court justice and superior court judge shall in the manner provided by law be subject to approval or a rejection on a non-partisan ballot at the first general election held more than three years after his or her appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year and every superior court judge every sixth year.

SECRETARY COOPER: Second.

DELEGATE JORDAN: Mr. President.

PRESIDENT CASSELL: Yes, sir.

DELEGATE JORDAN: I would reserve my time to debate my motion at the end of the question period.

PRESIDENT CASSELL: Okay. Did that get a second?

DELEGATE THOMAS: He got a second.

PRESIDENT CASSELL: Okay. Delegate Thomas.

DELEGATE THOMAS: Why do some delegates want elected judges? I've heard the following reasons given. To bring the judiciary closer to the people, to make the judiciary system responsive to the people. What does all this mean? It means you want to influence the judge and their decisions. You want to fix cases by using political influence. You want to be able to call up a judge and say you voted for him and he should rule in your favor. Besides, do you think you're going to nominate the judge on the ballot? Not you, the people--the politicians, the parties' officials, that's who'll put the judge's name on the ballot.

In other words, you want to abolish the independence of the judiciary system to prevent equal justice for all, to make justice more equal in your favor. This is nothing but prostitution of the court system.

I would like to say that in our District of Columbia, if you look at the total cour system--if you want

to look at it in a racial manner--we have more black judges in this system than any other system in the United States. So, I would be against Brother Jordan's motion.

PRESIDENT CASSELL: All right, Delegate Corn.

DELEGATE CORN: I was going to make an amendment to 3.10 as it stood. I wanted to add something like the following language, as far as possible, as far as feasible, something to this point. The idea that I wanted to convey--I don't have the exact language--

PRESIDENT CASSELL: Delegate Corn, just a moment. There is a motion on the floor to adopt Jordan's report. Now, what is your motion?

DELEGATE CORN: I want to make an amendment to 3.10 as it stood here or even if Delegate Jordan's goes through.

PRESIDENT CASSELL: There's a motion on the floor. You would have to be speaking to his motion.

DELEGATE CORN: No, sir, I can make an amendment or substitute.

PRESIDENT CASSELL: You have to make an amendment or a substitute to his motion.

DELEGAT JORDAN: Mine is a substitute motion, Mr. Chair.

PRESIDENT CASSELL: All right, we have a substitute

motion. Discussion on the substitute motion which was read to you by Jordan?

DELEGATE CORN: Sir, may I request that when his motion is either voted up or down I be recognized to make an amendment either to his motion or to the 3.10 as it stands?

PRESIDENT CASSELL: You will be recognized in turn. You have just had your turn, and you are out of order.

The next speaker is Brian Moore. And then Love.

DELEGATE B. MOORE: I'd like to make an amendment or a substitute motion to the amendment on the floor. And that would be as follows: Appointment of justices--

DELEGATE BALDWIN: Delegate Moore, what's on the floor is a substitute motion. Wasn't yours a substitute motion?

DELEGATE JORDAN: Yes, sir, I offered it as a substitute motion.

DELEGATE BALDWIN: What are you attempting to do?

DELEGATE B. MOORE: I would like to offer a motion to change the selection of judges from the executive to a commission. So, would this be an amendment to the substitute motion?

DELEGATE BALDWIN: You can determine yourself if

you know exactly what you want. If you want to amend the substitute motion that's on the floor, you would say, "I want to delete or add" or something. That's an amendment.

DELEGATE B. MOORE: I think it's a substitute.

DELEGATE BALDWIN: Pardon?

DELEGATE B. MOORE: It's a substitute.

DELEGATE BALDWIN: What's a substitute?

DELEGATE B. MOORE: My proposal.

DELEGATE BALDWIN: We need to hear it before we can determine that.

DELEGATE B. MOORE: All right. Appointment of justices of the court shall be made by the judicial commission. The judicial commission shall establish a mechanism allowing persons wishing to serve as judges or justices to file an application, or the commission may seek candidates as well.

DELEGATE BALDWIN: Shall be made by what commission?

DELEGATE B. MOORE: Judicial commission.

PRESIDENT CASSELL: Delegate Moore.

DELEGATE B. MOORE: Yes.

PRESIDENT CASSELL: What you're asking for is to make a substitute to a substitute motion. There is no such

provision for that in our rules, and I don't believe there's a substitute to a substitute in Robert's Rules of Order. Therefore, you should hold your motion until we dispose of this.

Further discussion on the substitute motion offered by Jordan? Love.

DELEGATE LOVE: Mr. Chair, a total of 36 states have judges elected one way or another. Mr. Jordan's proposal is not a proposal to elect judges. It is a proposal after judges have been appointed to do a yes or no vote on it. I would urge people who believe in an election of judges to vote against Mr. Jordan because it is not an election of judges, as has been stated on the floor.

PRESIDENT CASSELL: Delegate Freeman.

DELEGATE FREEMAN: I pass.

PRESIDENT CASSELL: Delegate Clarke.

DELEGATE CLARKE: Mr. Chairman, the proposal by Delegate Jordan is in use in some areas, and it is not extraordinary. However, I rise to speak for strongly against it for a number of reasons. I'd like to share at least two perspectives. One is that of a person who has practiced before courts and who has watched courts' activities, and I shared my thoughts in this regard with you last

night--that it is my impression that elected judges are not as independent in their judgment with respect to sensitive issues that are sensitive to people in this community. The other perspective which I wish to offer is that of an elected official like yourself, but an elected official whose income comes from the work that he does, whose career is that which he is elected to. We feel constantly the pressure of the public view, and we know that the public view changes from time to time. And we live in the danger that at the time of our election we might come before the body public at a point in time when the public view is very strongly influenced by one factor which, over the course of time, the public may become of a different view or less concerned about as it might at any given moment.

I can recall one year ago when I woke up one morning to find blasting on the front page of the Washington Post, the only daily newspaper in this city--

SECRETARY COOPER: Point of order.

DELEGATE CLARKE: I wish to speak, Mr. Chairman.

SECRETARY COOPER: A point of order has been raised.

DELEGATE CLARKE: When I awoke to find on the front page of the Washington Post an entire mischaracterization of

an effort upon which I had spent two years--

SECRETARY COOPER: Point of order. Mr. President, point of order.

DELEGATE CLARKE: Mr. Cooper, I wish to be allowed to speak.

PRESIDENT CASSELL: Just a minute. What is your point of order?

SECRETARY COOPER: My point of order is that Mr. Clarke is not referring to the motion. He's making a synopsis of his past life.

DELEGATE BALDWIN: That's not a point of order.

SECRETARY COOPER: It is a point of order. He's not speaking to the motion.

PRESIDENT CASSELL: The chair rules that the speaker is speaking properly to the motion. Please continue.

DELEGATE CLARKE: I arose that morning to find an entire mischaracterization. Over the next few days the pressure upon me was intense, and we had to backtrack with respect to the development of a piece of legislation because the one daily newspaper in this town determined that that had to be the case. That may have to be the case with respect to legislation. Maybe that should be the case with respect to legislation. Certainly legislators ought to be elected.

I would hate to see the individual rights of any one person be determined by what might happen on the front pages of the only daily newspaper in this town because it influences at that moment in time the actions of an elected judge. What happens to the course of law and the development of policy is something else. What happens in the course of the life of an individual is another thing.

Finally I would point out to you this, another experience of mine, and it had to do with the development of home rule in the early days of the implementation of the home rule government. Our current judges may be thought to be isolated and sit down in the courthouse. But when they wish, they can be heard. And if we provide for the election of judges, we are going to instantly provide for a very strong lobby against statehood in the Congress of the United States. We do have to take that into the balance. There will be an extremely strong and, let me tell you from my prior experience, an extremely effectively lobby with respect to it. I recognize it's a point of principle. But I don't know that it's a point of principle so extremely strong that we ought to do what we're going to be doing to the project about, if we undertake it. Thank you.

PRESIDENT CASSELL: Delegate Baldwin, Delegate

Rothschild.

DELEGATE BALDWIN: Fellow delegates, the Jordan amendment does not speak to election of judges, as one delegate reminded us all. It only says that after a judge has been appointed, that he or she may, by the constituents, be either rejected or approved. It doesn't have anything to do with the election of judges by the constituents.

PRESIDENT CASSELL: Delegate Rothschild.

DELEGATE ROTHSCHILD: Rothschild, Ward 2. I'd like to speak in favor of the motion on the floor because I believe this. I believe if we don't have some type of a system where the judge essentially has to come out into the sunshine and meet the public, that it will become a system that is too controlled by lawyers and the legal system. I think that, as we heard earlier, we do not necessarily want a purely elected system. I think a purely elected system does tend to put a lot of politics into the system. However, I don't think we want a purely appointed system where there's no touch with the public and there's no accountability to the public. I think this is a compromise situation where the judge is appointed, serves some time on the bench, and then goes before the public, not against an opponent. He just goes before the public to be accepted or rejected.

I also believe that in the general case, as the incumbent has the advantage of being in office, in a sense the judge sitting on the bench is like an incumbent. There is a certain momentum to keep him in place. So, I don't think that it will be necessary, even that easy, to throw him out that quickly. But yet it is that opportunity if he does something way out of line during his service; it can be put before the public, and the general momentum will be to leave him there because most people will say, "Well, he is a judge, he has been on the bench. I haven't heard that much about him. So, I'll let him stay there." So, I am in favor of Delegate Jordan's amendment. Thank you.

PRESIDENT CASSELL: Delegate Thomas.

DELEGATE THOMAS: Mr. President, I would like to correct a statement that Mr. Love made. In Mr. Love's opening statement Mr. Love said that 36 states have an elected form of judges. And that was a mistake, Mr. Love. I did a lot of research today, and I passed out a paper. Only 30 states and the District of Columbia have a merit selection system. You said 36 states had elected.

DELEGATE LOVE: Some form of elected judges. It might be the lower third. It might be--

DELEGATE THOMAS: Now, if you look through my

memorandum that I passed out today, you'll find what I'm saying to be true. And I would like to say to the delegates I did a lot of research today, and I brought in a document here tonight for you to read to answer some of your questions from last night. And I think if you look over it, you will find some of your answers in it. So, I just wanted to bring that to the attention of the delegates.

PRESIDENT CASSELL: Delegate Garner, then Eichhorn, and then I'd like to vote.

DELEGATE GARNER: Delegates, I rise in support of Delegate Jordan's motion. It is a very common mechanism for both selecting judges--it is merit selection of judges with an automatic form of a recall election at a set period of time known as the Missouri Plan. It is considered a major reform by professionals in the judicial field, and I urge you to support it.

What we are considering as our major topic under this article is, How can the people get involved in judicial selection? The committee has offered us two ways. Political leaders, the governor, appoint members to the judicial nominating commission and also selects for appointment judges. There's a very minor role for the people in the selection of judges. Another mechanism, not provided by the

committee is that the merits of nominees be publicized and their qualifications widely distributed. That is not provided for in the committee's report. There is also what they are providing for in the committee report is the election of members of the judicial nominating commission, a unique provision. There is also the possibility, similar to the Jordan motion, for the right to petition to recall a particular judge. There is the Jordan proposal, which I think is very moderate. And there is the straight-out election of judges. The motion before you is a moderate--and I don't know if Mr. Jordan appreciates this support--a moderate proposal for the citizens to be involved in reviewing the qualifications of people already on the bench. And I urge you to support it.

PRESIDENT CASSELL: Delegate Eichhorn and then Delegate Jordan.

DELEGATE EICHHORN: I am opposed to this motion. The issue of special interest groups rising to oppose a judge during a campaign around a particular special issue is available under this process. Although it is not an election to propose a candidate, the judge has to go before the people for approval. A special interest group can threaten judges that if they do not take a certain stance

for their support or pledge to, they will oppose them at the polls or turn it into another initiative type election. And I would not like to see that happen. I think the potential for that is considerable. And I'm opposed to the motion for that reason.

PRESIDENT CASSELL: Delegate Schrag.

DELEGATE SCHRAG: I also oppose and just recall for the delegates the recent immigration of people and money to our jurisdiction when we had the initiative on the tax credit plan last fall. Can you imagine that happening in the way that Delegate Eichhorn talks about with respect to a judge who had ruled a particular way on abortions or on taxes or something and this becoming a political football for all the special interest groups in other states? I oppose the motion for the reasons described by Delegate Eichhorn.

PRESIDENT CASSELL: Delegate Oulahan and then Jordan.

DELEGATE OULAHAN: Mr. Chairman, there's also a hidden weapon in this motion from my friend, Mr. Jordan. You will notice that the terms of the judges are reduced to well below the 15 years that we have right now. So, it's a two-headed motion. It's a motion that not only seeks election but also that.

I might say that the states that Mr. Love mentioned as having elections are those with the Missouri Plan, which is the plan that Mr. Jordan has. The American Judicature Society, shown in that information which Harry gave you today, states that you get a better judicial system with no elections than you do get with elections. The American Judicature Society is a society to which all federal and state judges belong. And I think maybe they ought to be able to know what they're doing.

PRESIDENT CASSELL: Delegate Jordan.

DELEGATE JORDAN: Yes, Mr. Chairman, I would--first I would like to commend the committee for the hard work that it has put in this document. And my motion is in no way designed to be critical of that work. There are a couple of issues that have to be addressed today or this evening. And, first of all, what we have to do is compare what's being proposed by what we have now. If we look at the committee's report or the committee's recommendation under 3.10, it merely carries over the present system. Now, if the arguments that are presented by opponents to this proposal are correct, then we wouldn't see any politicizing in the process. But I'm reminded--and I think most of you who live in this city or have lived here for a period of time, if you just think back

a few years ago--I'm reminded when Judge Halleck was driven off the court system for reasons that had nothing to do with his competence as a judge. I don't know what you'd call it if it's not political. I'm reminded that Harry T. Alexander was driven off the court system of the District of Columbia, one that is supposed to be free and immune from this politicizing. I don't know what the reason was. It had nothing to do with his competence as a jurist.

And I'm also cognizant of the fact that this evening that an underlying premise in this is that if you don't vote us, the judges will go to Capitol Hill, as they have historically done, and ask that home rule be voted down--I mean, that statehood be voted down, the constitution not be accepted. That was a Freudian slip. Why? Because they went up to vote against home rule when it came up. So, it's nothing new. We've had to fight this battle before, with the judges coercing and intimidating and never subjecting themselves to the will of the people.

Now, I have to say one thing. I'd feel very uncomfortable standing here this evening proposing an amendment had any of the judges saw fit to accept an invitation of a committee to appear before it. But not one judge in the District of Columbia came before the judiciary committee to

speak before it. Now, there's something else that I'm reminded of because one day I did sit in on a meeting of the judiciary committee. And I'm reminded when Dr. Mary Barry of Howard University came before the committee. She said that something was very important. She pointed to the fact that there were some problems in our system. And she said what has to happen is there has to be a balance struck between independence and accountability.

The scale is weighed heavily in favor tonight, if we accept the committee's report, of independence with no accountability whatsoever. I'm only trying to bring about a balance because I think those that represent us in any form of government--the courts are not sacrosanct. They are but the third leg of our government. We have the executive, the judiciary, and we have the courts. I don't know why we treat them any differently.

DELEGATE ROBINSON: No, the legislature.

DELEGATE JORDAN: That's right. Excuse me, Dr. Robinson. [Delegates laugh.]

I didn't mean that with any disrespect.

What I would like to say is the most eloquent statement in support of my proposal this evening is the work that Delegate Thomas did. He said he put a lot of time and

effort into this research, and he asked each and every one of us to read it. And included in his report, Exhibit D, is a map. And, lo and behold, here's Alaska sitting right there on the map as a model of what the committee has proposed, a merit selection state. I'm only proposing that we adopt the same system that Alaska has and which is listed by all these organizations that they like to say represent the jurists, the American Judicial Society. They cited that and said this was a group that we should listen to. Well, I want to listen to them too. They said here on Exhibit D that Alaska is a model state. I don't need to say any more.

I just hope, you know, that you'll vote for this amendment because we need to have a balance between independence and accountability. Thank you very much. [Scattered applause]

PRESIDENT CASSELL: Are we ready to vote?

DELEGATE LOVE: Roll call vote, please.

PRESIDENT CASSELL: Those in favor of the amendment offered by Delegate Jordan, signify by raising your hands.

DELEGATE LOVE: Mr. Chair, a roll call vote, please.

DELEGATE CORN: Roll call.

PRESIDENT CASSELL: Let me withdraw that. Are there four people who would support the call for a roll call? [Four hands raised]

There are. Mr. Secretary.

If you are in favor of Delegate Jordan's amendment, proposal, then you will signify by saying, "Yes." If you oppose it, signify by saying, "No."

SECRETARY COOPER: Delegate Cooper, yes.

Delegate Corn.

DELEGATE CORN: Pass.

SECRETARY COOPER: Delegate Croft.

DELEGATE CROFT: Yes.

SECRETARY COOPER: Delegate Eichhorn.

DELEGATE EICHHORN: No.

SECRETARY COOPER: Delegate Feely. [No response]

Delegate Freeman.

DELEGATE FREEMAN: No.

SECRETARY COOPER: Delegate Garner.

DELEGATE GARNER: Yes.

SECRETARY COOPER: Delegate Graham. [No response]

Delegate Harris. [No response]

Delegate Holmes.

DELEGATE HOLMES: Yes.

SECRETARY COOPER: Delegate Jackson.

DELEGATE JACKSON: Yes.

SECRETARY COOPER: Delegate Johnson. [No response]

Delegate Jones.

DELEGATE JONES: Yes.

SECRETARY COOPER: Delegate Jordan.

DELEGATE JORDAN: Yes.

SECRETARY COOPER: Delegate Kameny.

DELEGATE KAMENY: Pass.

SECRETARY COOPER: Was that a pass or a yes?

DELEGATE KAMENY: Pass.

SECRETARY COOPER: Delegate Lockridge. [No response]

Delegate Long.

DELEGATE LONG: No.

SECRETARY COOPER: Delegate Love.

DELEGATE LOVE: Yes.

SECRETARY COOPER: Delegate Maguire. [No response]

Delegate Marcus.

DELEGATE MARCUS: Pass.

SECRETARY COOPER: Delegate Charles Mason.

DELEGATE C. MASON: No.

SECRETARY COOPER: Delegate Hilda Mason.

DELEGATE H. MASON: No.

SECRETARY COOPER: Delegate Brian Moore.

DELEGATE B. MOORE: No.

SECRETARY COOPER: Delegate Jerry Moore. [No response]

Delegate Talmadge Moore. [No response]

Delegate Nahikian. [No response]

Delegate Nixon.

DELEGATE NIXON: Pass.

SECRETARY COOPER: Delegate Oulahan.

DELEGATE OULAHAN: No.

SECRETARY COOPER: Delegate Paramore. [No response]

Delegate Robinson.

DELEGATE ROBINSON: Pass.

SECRETARY COOPER: Delegate Rothschild.

DELEGATE ROTHSCHILD: Yes.

SECRETARY COOPER: Delegate Schrag.

DELEGATE SCHRAG: No.

SECRETARY COOPER: Delegate Shelton. [No response]

Delegate Simmons. [No response]

Delegate Street.

DELEGATE STREET: Yes.

SECRETARY COOPER: Delegate Terrell. [No response]

Delegate Thomas.

DELEGATE THOMAS: No.

SECRETARY COOPER: Delegate Warren. [No response]

Delegate Baldwin.

DELEGATE BALDWIN: Yes.

SECRETARY COOPER: Delegate Barnes. [No response]

Delegate Blount.

DELEGATE BLOUNT: No.

SECRETARY COOPER: Delegate Bruning.

DELEGATE BRUNING: Yes.

SECRETARY COOPER: Delegate Corn.

DELEGATE CORN: Can you wait a second?

SECRETARY COOPER: Delegate Coates.

DELEGATE COATES: Yes.

A DELEGATE: You're only allowed one pass.

DELEGATE CORN: You only have one pass. I asked, can you wait a second?

SECRETARY COOPER: Delegate Corn.

DELEGATE CORN: Yes.

SECRETARY COOPER: Delegate Kameny.

DELEGATE KAMENY: No.

SECRETARY COOPER: Delegate Marcus. [No response]

Delegate Nixon.

DELEGATE NIXON: No.

SECRETARY COOPER: Delegate Robinson.

DELEGATE ROBINSON: No.

SECRETARY COOPER: Delegate Cassell.

PRESIDENT CASSELL: Yes.

SECRETARY COOPER: Mr. President--

DELEGATE CLARKE: Can I vote? I have a vote.

SECRETARY COOPER: Delegate Clarke.

DELEGATE CLARKE: No.

SECRETARY COOPER: Mr. President, the vote stands 15 in favor of the substitute, 14 not in favor of the substitute.

PRESIDENT CASSELL: The substitute motion carries.

Were there any abstentions?

SECRETARY COOPER: No abstentions.

PRESIDENT CASSELL: All right.

DELEGATE THOMAS: There was an abstention. Marcus.

SECRETARY COOPER: Marcus didn't abstain.

DELEGATE MARCUS: You didn't give me time to answer, Mr. Cooper. You went right by name.

SECRETARY COOPER: Yes, I did. I called you twice.

DELEGATE MARCUS: I passed the first time.

SECRETARY COOPER: You passed, and then I called you twice the second time.

DELEGATE MARCUS: No, you called me once. I'd like the record to show that I abstained on that vote, please.

SECRETARY COOPER: You may enter in writing to the record as to how you may have voted.

DELEGATE MARCUS: Mr. President, why is the secretary so obstinate on these issues?

SECRETARY COOPER: I'm not obstinate. I'm doing my job.

PRESIDENT CASSELL: The president requests the secretary to record the vote as indicated by the person speaking.

DELEGATE MARCUS: Thank you.

PRESIDENT CASSELL: Delegate Blount.

DELEGATE CLARKE: Question. He is recording that vote as the gentleman has spoken. This was a roll call vote. The results remain the same.

PRESIDENT CASSELL: No, it doesn't.

DELEGATE CLARKE: It does not?

PRESIDENT CASSELL: No, it doesn't. It has to be reported. One abstention.

DELEGATE CLARKE: No, it was a 15 to 14 vote, sir.

DELEGATE BALDWIN: So, now it is 15-14-1.

SECRETARY COOPER: No, Mr. President.

DELEGATE BALDWIN: It is 15-14-1. One abstained, and the president is right in recording Delegate Marcus's vote. He passed the first time--

DELEGATE CLARKE: Wait a minute. I'm asking the president now, Mr. Baldwin. I'm hearing two messages.

DELEGATE BALDWIN: It's the same message.

PRESIDENT CASSELL: What we have to do is to add. He was not recorded as voting before.

DELEGATE CLARKE: He was not recorded as voting. All right, thank you.

PRESIDENT CASSELL: Now his vote has been recorded.

Delegate Blount.

DELEGATE BLOUNT: I move the adoption of section 3.11, Requirement for Judicial Office.

PRESIDENT CASSELL: I'm sorry. May I hear that again? And if you'd be just quiet [addressing Delegate Corn].

DELEGATE BLOUNT: I move the adoption of section 3.11, Requirement for Judicial Office.

DELEGATE THOMAS: I second.

DELEGATE B. MOORE: Point of order. Point of

information.

PRESIDENT CASSELL: Yes.

DELEGATE B. MOORE: Can I assume that with the vote that was just taken my proposed substitute motion would not be applicable?

PRESIDENT CASSELL: No, it wouldn't. It has been adopted.

DELEGATE B. MOORE: It has been adopted.

PRESIDENT CASSELL: Yes.

DELEGATE CORN: I would like to add something to it. Can I make an amendment to it?

PRESIDENT CASSELL: No, I'm afraid you can't.

DELEGATE CORN: Why not, sir?

PRESIDENT CASSELL: You cannot. An amendment is something that's on the floor. This has already been passed.

DELEGATE CORN: Yes, but you can still add something more to what has been passed.

PRESIDENT CASSELL: No, you can't. You can make a new motion. You can ask for reconsideration, which I hope nobody will do.

The motion on the floor now is to adopt--it has been moved and seconded that we adopt 3.11. Discussion?

Rothschild, Corn, Love.

DELEGATE B. MOORE: Point of order, Mr. President. I believe my seconded motion would be in order after the vote because it's not--that vote was taken on the relationship between the executive and the commission. My substitute motion was on the commission itself doing the selection of the judges. So, I think it's in order.

PRESIDENT CASSELL: A substitute motion has to be directed to something that is on the floor. You can't substitute for something that doesn't exist.

DELEGATE B. MOORE: Right. You asked me to withdraw it because it wasn't applicable at that time. So, it would be a new motion then.

PRESIDENT CASSELL: No. Refresh my memory as to what motion you're referring to now.

DELEGATE B. MOORE: I proposed--

PRESIDENT CASSELL: Delegate Corn, would you let me...

DELEGATE B. MOORE: I proposed the idea that the justices and judges of the court system would be selected by a commission. All right?

PRESIDENT CASSELL: And this was as an amendment?

DELEGATE B. MOORE: This was as a substitute. And

you said you cannot submit a substitute for a substitute.

PRESIDENT CASSELL: Yes.

DELEGATE B. MOORE: So, you said, "Why don't you wait until this is over. Then you can bring it up."

I said, "Fine," and then I withdrew and sat down.

PRESIDENT CASSELL: Okay, now, you want to offer a substitute motion to what?

DELEGATE B. MOORE: Yes, a substitute motion to 3.10.

[Pause for officers to confer]

DELEGATE BALDWIN: There's a point of parliamentary procedure being discussed. Delegate Brian Moore is on the floor, and he has raised a question which is a legitimate question. The chair has been advised as to what to do.

[Pause for officers to confer]

PRESIDENT CASSELL: Delegate Schrag.

DELEGATE SCHRAG: Mr. Chairman.

PRESIDENT CASSELL: Delegate Schrag.

DELEGATE SCHRAG: I move to adjourn.

PRESIDENT CASSELL: It has been moved that we adjourn.

DELEGATE LOVE: Second.

PRESIDENT CASSELL: Second, all right. All those

in favor of adjourning, signify by saying, "Aye." [Response]

Those opposed? [Response]

The ayes have it.

SECRETARY COOPER: Division. Division.

[The session was adjourned at 10:55 p.m.]

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